

1 AN ACT relating to financial transactions.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. SUBTITLE 12 OF KRS CHAPTER 286 IS ESTABLISHED,
4 AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

5 *As used in this subtitle, unless the context requires otherwise:*

6 *(1) "Check" means any check, draft, money order, personal money order, traveler's*
7 *check, or other demand instrument for the transmission or payment of money,*
8 *including any customer authorization for electronic payment;*

9 *(2) (a) "Control" means the direct or indirect power to direct or cause the direction*
10 *of the management and policies of a person, whether through ownership of*
11 *voting securities, by contract, or otherwise, except that no individual shall*
12 *be deemed to control a person solely because the individual is a director,*
13 *officer, or employee of a person.*

14 *(b) For purposes of this subsection, a person who, directly or indirectly, owns,*
15 *controls, holds the power to vote, or holds proxies representing twenty-five*
16 *percent (25%) or more of the current outstanding voting securities issued by*
17 *another person is presumed to control the other person. The commissioner*
18 *may determine whether a person, in fact, controls another person;*

19 *(3) "Controlling person" means any person in control of a licensee;*

20 *(4) "Default" means:*

21 *(a) The failure of a customer to make a required payment within a certain*
22 *number of days after the due date specified on a periodic billing statement,*
23 *as agreed upon by the licensee and the customer in the credit access loan*
24 *plan, but only if the licensee declares the customer in default within sixty-*
25 *one (61) days after the due date on the billing statement; and*

26 *(b) The customer's failure to otherwise perform the obligations under the credit*
27 *access loan plan;*

1 (5) "Credit access loan" means a loan made pursuant to a credit access loan plan;

2 (6) "Credit access loan plan" means a written agreement subject to this subtitle that

3 is:

4 (a) Executed in person at a physical location that is:

5 1. Within the Commonwealth of Kentucky; and

6 2. Licensed by the department; and

7 (b) Between a licensee and a customer establishing an open-end credit plan

8 that contemplates credit transactions from time to time that:

9 1. May be unsecured or secured by personal property;

10 2. Shall have a fixed maturity date or a limitation as to the length of
 11 each loan term not exceeding twelve (12) months; and

12 3. Are subject to prepayment in whole or in part at any time without
 13 penalty;

14 (7) "Licensee" means a person licensed to offer credit access loans pursuant to this
 15 subtitle; and

16 (8) "Person" means an individual, group of individuals, partnership, association,
 17 corporation, or any other business, unit, or legal entity.

18 ➔SECTION 2. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 19 IS CREATED TO READ AS FOLLOWS:

20 (1) No person shall engage in the business of making credit access loans unless the
 21 person is licensed pursuant to this subtitle. A separate license shall be required
 22 for each location from which the business of making credit access loans is
 23 conducted.

24 (2) Each location licensed by the department shall be physically located in Kentucky
 25 with at least one (1) full-time employee, and the address of the location shall be
 26 filed with the commissioner.

27 ➔SECTION 3. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286

1 IS CREATED TO READ AS FOLLOWS:

2 (1) An applicant for a license to engage in the business of making credit access loans
3 shall meet the following requirements:

4 (a) The applicant shall have a tangible net worth that comprises tangible assets,
5 less liabilities, of at least fifty thousand dollars (\$50,000) for each location;
6 and

7 (b) The financial responsibility, financial condition, business experience,
8 character, and general fitness of the applicant shall reasonably warrant the
9 belief that the applicant's business will be conducted lawfully, honestly,
10 carefully, and efficiently. In determining whether these qualifications have
11 been met, and for the purpose of investigating compliance with this subtitle,
12 the commissioner may consider:

13 1. Any relevant business records and the capital adequacy of the
14 applicant;

15 2. The competence, experience, integrity, and financial ability of any
16 person who is a director, ten percent (10%) or more shareholder, or
17 controlling person of the applicant; and

18 3. Any record of the applicant or any person referred to in subparagraph
19 2. of this paragraph of any:

20 a. Criminal activity;

21 b. Fraud or other act of personal dishonesty;

22 c. Act, omission, or practice that constitutes a breach of a fiduciary
23 duty; or

24 d. Suspension, revocation, or removal from participation in the
25 conduct of any business by any state or federal agency or
26 department.

27 (2) The commissioner shall periodically review each licensee's compliance with

1 subsection (1) of this section.

2 ➔SECTION 4. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
3 IS CREATED TO READ AS FOLLOWS:

4 Each application for a license shall be in a form prescribed by administrative
5 regulation promulgated by the commissioner that includes the following:

6 (1) The legal name, residence, and business address of the applicant, and if the
7 applicant is a partnership, association, limited liability company, or corporation,
8 the legal name, residence, and business address of every member, officer,
9 managing employee, and director of the applicant;

10 (2) The name of the agent in this Commonwealth that will be maintained by the
11 applicant for service of process. The name, address, telephone number, and
12 electronic mail address of the agent shall be filed with the application. The
13 commissioner shall be notified in writing by the licensee at least five (5) days
14 prior to any change in the status of an agent; and

15 (3) Other data and information the commissioner may require about the applicant,
16 and its directors, trustees, officers, members, managing employees, controlling
17 persons, or agents.

18 ➔SECTION 5. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
19 IS CREATED TO READ AS FOLLOWS:

20 (1) Each application for a license issued pursuant to this subtitle shall be
21 accompanied by:

22 (a) For each location:

23 1. A filing fee of five hundred dollars (\$500), which shall not be subject
24 to refund. If the license is granted, the filing fee shall constitute the
25 license fee for the first license year, or remaining part of a year; or

26 2. In lieu of a filing fee, the commissioner may prescribe by
27 administrative regulation a nonrefundable supervision fee;

1 **(b) 1. A financial statement that at a minimum includes a balance sheet, a**
2 **statement of income or loss, and a statement of changes in financial**
3 **position for the immediately preceding fiscal year, prepared in**
4 **accordance with generally accepted accounting principles by a**
5 **certified public accountant or public accounting firm.**

6 **2. If the applicant does not have a financial statement meeting the**
7 **requirements of subparagraph 1. of this paragraph, it may submit a**
8 **financial statement of its parent if the financial statement is prepared**
9 **in accordance with generally accepted accounting principles by a**
10 **certified public accountant or public accounting firm.**

11 **3. For a newly created entity, the commissioner may accept a balance**
12 **sheet prepared by a certified public accountant or public accounting**
13 **firm, accompanied by a projected income statement demonstrating**
14 **that the applicant will have adequate capital after payment of start-up**
15 **costs; and**

16 **(c) 1. A surety bond, issued by an insurer regulated under Subtitle 9 of KRS**
17 **Chapter 304 and not affiliated with the applicant, in the amount of**
18 **twenty-five thousand dollars (\$25,000) for each location. However, the**
19 **aggregate amount of the surety bond required for a single licensee**
20 **shall not exceed two hundred thousand dollars (\$200,000).**

21 **2. In lieu of the surety bond, the applicant may file an irrevocable letter**
22 **of credit in the same amount that would be required for a surety bond,**
23 **issued by any federally insured bank, savings bank, or credit union**
24 **that is not affiliated with the applicant.**

25 **3. The surety bond or irrevocable letter of credit shall be in a form that is**
26 **satisfactory to the commissioner and shall be payable to the**
27 **commissioner for the benefit of any person who is injured by the**

- 1 fraud, misrepresentation, breach of contract, or financial failure of a
2 licensee, or the violation of any provision of this subtitle by a licensee
3 in connection with a credit access loan plan.
- 4 4. In the case of a surety bond, the aggregate liability of the surety bond
5 shall not exceed the principal sum of the surety bond.
- 6 5. In the case of an irrevocable letter of credit, an applicant shall obtain
7 a letter of credit for a term of not less than three (3) years and renew
8 the letter of credit annually.
- 9 6. If the licensee fails to pay a person or the commissioner, as required
10 by this subtitle, then the commissioner or the affected person may
11 bring suit against the licensee directly on the surety bond or
12 irrevocable letter of credit. Franklin Circuit Court shall be the
13 exclusive venue in all matters relating to this subsection on behalf of
14 those persons in either one (1) or successive actions.
- 15 7. The surety bond or irrevocable letter of credit shall be maintained by
16 the licensee for not less than three (3) years following the expiration,
17 revocation, or surrender of the licensee's license.
- 18 (2) (a) 1. As is reasonably necessary to carry out the purposes of this subtitle,
19 the commissioner may require any of the following persons to consent
20 to a criminal history records check and to provide fingerprints with
21 the application in a form acceptable to the commissioner:
- 22 a. An applicant;
23 b. An individual who is a director, officer, ten percent (10%) or
24 more shareholder, or controlling person of the applicant; or
25 c. Any other individual associated with the applicant.
- 26 2. Subparagraph 1. of this paragraph shall not apply to any shareholder
27 of an applicant if the applicant or its parent company is a publicly

1 traded corporation. For the purposes of this subparagraph, "publicly
2 traded" means having stock that is currently traded on a national
3 securities exchange registered with the federal Securities and
4 Exchange Commission or traded on an exchange in a country other
5 than the United States that is regulated by a regulator that is
6 substantially equivalent to the Securities and Exchange Commission
7 with disclosure and reporting requirements that are substantially
8 similar to those of the Securities and Exchange Commission.

9 (b) Refusal of any person to consent to a criminal history records check or to
10 provide fingerprints in accordance with this subsection constitutes grounds
11 for the commissioner to deny the applicant a license.

12 (c) Any criminal history records check conducted pursuant to this subsection
13 shall be conducted by the Kentucky State Police, the Federal Bureau of
14 Investigation, or both, and the results of the criminal history records check
15 shall be forwarded to the commissioner. All costs incurred in conducting
16 the criminal history records check shall be paid by the applicant, in addition
17 to any other fees required by this subtitle.

18 ➔SECTION 6. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
19 IS CREATED TO READ AS FOLLOWS:

20 (1) Upon the filing of the application, fees, and documents required by Sections 4
21 and 5 of this Act, the commissioner shall ascertain whether the requirements of
22 Section 3 of this Act have been satisfied. If the commissioner finds that the
23 requirements have been satisfied, and approves the documents, the commissioner
24 shall issue a license to the applicant.

25 (2) The license shall be conspicuously posted in the licensee's place of business at all
26 times.

27 (3) A license issued pursuant to this subtitle shall remain in force and effect until it

1 expires in accordance with the provisions set forth in Section 8 of this Act unless
2 earlier surrendered, suspended, or revoked pursuant to this subtitle.

3 ➔SECTION 7. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
4 IS CREATED TO READ AS FOLLOWS:

5 (1) If the commissioner determines that an applicant is not qualified to receive a
6 license, the commissioner shall notify the applicant in writing that the application
7 has been denied, stating the basis for denial.

8 (2) If the commissioner denies an application, or if the commissioner fails to act on
9 an application within ninety (90) days after the filing of a properly completed
10 application, the applicant may make a written demand to the commissioner for a
11 hearing before the commissioner on the question of whether the license should be
12 granted.

13 (3) Any hearing or review of a hearing on the denial of a license shall be conducted
14 pursuant to KRS Chapter 13B. Notwithstanding any provisions in KRS Chapter
15 13B to the contrary, the burden of proof that the applicant is entitled to a license
16 shall be on the applicant.

17 ➔SECTION 8. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
18 IS CREATED TO READ AS FOLLOWS:

19 (1) Unless otherwise extended by subsection (3) of this section, licenses issued
20 pursuant to this subtitle shall expire on December 31 of the year in which they
21 are issued. Each license may be renewed for a subsequent twelve (12) month
22 period upon receipt by the commissioner within sixty (60) days of expiration of
23 the license of:

24 (a) An application by the licensee showing continued compliance with the
25 requirements of Sections 3, 4, and 5 of this Act; and

26 (b) The payment of a license renewal fee of five hundred dollars (\$500), or if
27 established pursuant to Section 5 of this Act, the commissioner shall require

1 licensees to pay the nonrefundable supervision fee in lieu of the license
 2 renewal fee.

3 (2) A licensee that submits a timely and complete application for renewal of its
 4 license shall be permitted to continue to operate under its existing license until its
 5 application for renewal is approved or denied.

6 (3) The commissioner may establish, by promulgation of an administrative
 7 regulation, a biennial license, but the license renewal or supervision fee shall not
 8 be payable for more than one (1) year at a time.

9 ➔SECTION 9. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 10 IS CREATED TO READ AS FOLLOWS:

11 (1) A license issued pursuant to this subtitle is not transferable or assignable.

12 (2) (a) The prior written approval of the commissioner is required for the
 13 continued operation of a licensee whenever a change in control of the
 14 licensee is proposed. The commissioner may require any information
 15 deemed necessary to determine whether a new application is required.
 16 Reasonable and actual costs incurred by the commissioner in investigating
 17 a change of control request shall be paid by the person requesting approval.

18 (b) Whenever control is acquired or exercised in violation of this section, the
 19 license or licenses of a licensee shall be deemed revoked as of the date of the
 20 unlawful acquisition of control. The licensee or its controlling person shall
 21 surrender the license or licenses to the commissioner on demand.

22 (3) A licensee shall notify the department at least five (5) days before any change in
 23 the licensee's principal place of business, location, or name.

24 ➔SECTION 10. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 25 IS CREATED TO READ AS FOLLOWS:

26 (1) Notwithstanding any other statute to the contrary, a licensee may charge and
 27 collect interest, fees, and charges in a manner consistent with this section.

1 (2) A licensee may charge and collect a periodic interest rate not to exceed twenty-
2 four percent (24%) per year.

3 (3) (a) In addition to the periodic interest rate authorized pursuant to subsection
4 (2) of this section, a licensee may also charge and collect a customary fee
5 for each credit access loan plan to defray the ordinary costs of opening,
6 administering, and terminating the plan, including but not limited to costs
7 associated with:

8 1. Underwriting and documenting the account;

9 2. Securing and maintaining account information;

10 3. Validating customer information;

11 4. Offering phone access to accounts;

12 5. Processing account transactions;

13 6. Responding to customer inquiries;

14 7. Providing periodic billing statements;

15 8. Inspecting, verifying, and protecting collateral, including establishing,
16 perfecting, and releasing a security interest; and

17 9. Any other services or activities conducted by the licensee under a
18 credit access loan plan.

19 (b) The customary fee shall not be deemed interest for any purpose of law and
20 shall not exceed a daily rate of seven-tenths of one percent (0.7%) of the
21 average daily principal balance in any billing cycle.

22 (4) No credit access loan plan shall have outstanding credit access loans with an
23 aggregate principal balance in excess of one thousand five hundred dollars
24 (\$1,500) at any time.

25 (5) Each credit access loan shall require payments:

26 (a) Set at equal intervals agreed to in advance by the parties; and

27 (b) In the form of cash, money order, debit card or prepaid debit card, or any

1 other commercially reasonable instrument for payment of money, whether
 2 or not negotiable, including any authorization for the electronic transfer of
 3 funds by the due date of each billing cycle.

4 (6) (a) If a customer defaults and the licensee refers the customer's account to an
 5 attorney for collection, the licensee may, if the credit access loan plan or the
 6 security agreement or similar instrument in the case of a plan secured by
 7 personal property so provides:

8 1. Charge and collect from the customer a reasonable attorney's fee; and
 9 2. Recover from the customer all collection and court costs, including all
 10 costs of enforcing the security agreement or similar instrument in the
 11 case of plans secured by personal property, actually incurred by the
 12 licensee, including costs incurred on appeal.

13 (b) A licensee may recover interest at the rate awarded by the court on any loan
 14 in which a judgment in favor of the licensee is awarded.

15 (c) In the case of plans secured by personal property, a licensee may dispose of
 16 property after default in a commercially reasonable manner in accordance
 17 with KRS 355.9-610.

18 (7) A licensee may charge, collect, and receive from a customer check collection
 19 charges made by a financial institution for each check returned or dishonored for
 20 any reason if the terms and conditions upon which the charges will be charged,
 21 collected, and received from the customer are set forth in the written disclosure
 22 required by Section 11 of this Act.

23 ➔SECTION 11. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 24 IS CREATED TO READ AS FOLLOWS:

25 (1) (a) Prior to executing a credit access loan plan, a licensee shall provide each
 26 prospective customer with a written explanation in clear, understandable
 27 language of the interest, fees, and charges to be charged by the licensee.

1 *The style, content, and method of execution of the required written*
 2 *explanation shall:*

- 3 *1. Comply with federal truth-in-lending laws;*
 4 *2. Contain a statement that the customer may prepay the unpaid balance*
 5 *in whole or in part at any time without penalty;*
 6 *3. Contain a next-business-day customer's right of rescission for any*
 7 *requested credit access loan;*
 8 *4. Contain a notice informing the customer that complaints may be made*
 9 *to the department, including the department's telephone number and*
 10 *address; and*
 11 *5. Comply with any other state or federal law requirements.*

12 *(b) The commissioner may promulgate administrative regulations establishing*
 13 *additional requirements for the written explanation required by this*
 14 *subsection in order to ensure complete and accurate disclosure of the*
 15 *interest, fees, and charges to be charged by a licensee under a credit access*
 16 *loan plan.*

17 *(2) Nothing in this section requires or provides the licensee with authority to require*
 18 *a customer to draw the full amount of credit available under a credit access loan*
 19 *plan at any time.*

20 *(3) A licensee shall provide each customer with a periodic billing statement in*
 21 *compliance with federal truth-in-lending laws.*

22 ➔SECTION 12. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 23 IS CREATED TO READ AS FOLLOWS:

24 *(1) (a) Each licensee shall keep and use in its business any books, accounts,*
 25 *financial reports, and records the commissioner may require to administer*
 26 *and regulate the provisions of this subtitle and the administrative*
 27 *regulations promulgated pursuant to this subtitle.*

- 1 **(b) The books, accounts, financial reports, and records shall be preserved for at**
2 **least three (3) years, unless applicable state or federal law requires a longer**
3 **retention period.**
- 4 **(c) Notwithstanding paragraph (b) of this section, the commissioner may, prior**
5 **to expiration of the minimum retention period, approve a written request for**
6 **the destruction of records referenced in this section.**
- 7 **(d) The books, accounts, financial reports, and records may be maintained in**
8 **an electronic retrievable format, or other similar form of medium, if the**
9 **records are readily accessible to examination, investigation, and inspection**
10 **by the commissioner.**
- 11 **(2) Any person who ceases operating a business licensed under this subtitle shall:**
- 12 **(a) At least thirty (30) days prior to the discontinuance of the business, notify**
13 **the commissioner in writing of the physical location of the records required**
14 **to be preserved by subsection (1) of this section. The records shall be made**
15 **accessible to the commissioner upon five (5) business days' written notice;**
16 **and**
- 17 **(b) Designate a custodian of records and notify the commissioner of the name,**
18 **physical address, electronic mail address, and telephone number of the**
19 **custodian. The custodian of records shall preserve all records required to be**
20 **preserved by subsection (1) of this section and allow the commissioner**
21 **access to the records for examination and investigation upon demand.**
- 22 **(3) A licensee shall not engage in unfair or deceptive acts, practices, or advertising in**
23 **the conduct of the licensed business.**
- 24 **(4) A customer shall not have more than one (1) outstanding credit access loan plan**
25 **at any given time and the total outstanding balance for all credit access loans**
26 **made pursuant to the credit access loan plan shall not exceed one thousand five**
27 **hundred dollars (\$1,500) at any given time. Prior to the database becoming fully**

1 operational as set forth in subsection (15) of Section 23 of this Act, each licensee
 2 shall inquire of any customer seeking a credit access loan plan regarding the
 3 customer's outstanding credit access loan plans.

4 (5) A licensee shall not use any device or agreement, including agreements with
 5 affiliated licensees, with the intent to obtain greater interest, fees, or charges than
 6 otherwise authorized by this subtitle.

7 (6) A licensee shall comply with any state or federal law, rule, or regulation
 8 applicable to any business authorized or conducted pursuant to this subtitle,
 9 including but not limited to the Truth in Lending Act, 15 U.S.C. secs. 1601 et
 10 seq., the Equal Credit Opportunity Act, 15 U.S.C. secs. 1691 to 1691f, and the
 11 Fair Debt Collection Practices Act, 15 U.S.C. secs. 1692 et seq.

12 (7) (a) No credit access loan plan shall:

13 1. Provide that the law of a jurisdiction other than this state applies to
 14 the plan;

15 2. Provide that the customer consents to the jurisdiction of another state
 16 or foreign country;

17 3. Establish venue other than as provided in Section 5 of this Act; or

18 4. Waive any provision of this subtitle.

19 (b) Any provision described in paragraph (a) of this subsection that is
 20 contained in a credit access loan plan shall be void and shall not be
 21 enforceable as a matter of public policy.

22 ➔SECTION 13. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 23 IS CREATED TO READ AS FOLLOWS:

24 (1) Any credit access loan plan made with a person who is not licensed pursuant to
 25 this subtitle shall be void, and the person shall not be entitled to collect any
 26 principal, fee, interest, charges, or recompense whatsoever.

27 (2) Credit access loan plans shall not be subject to or controlled by any other statute

1 governing the imposition of interest, fees, or loan charges. A licensee shall not
2 have the powers enumerated in this subtitle without first complying with the law
3 regulating the particular transaction involved, but licensees legally exercising
4 any of the powers set forth in this subtitle shall not be deemed in violation of any
5 statute governing or prohibiting usury, including but not limited to KRS 360.010.

6 ➔SECTION 14. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
7 IS CREATED TO READ AS FOLLOWS:

8 (1) The commissioner may promulgate administrative regulations for the
9 enforcement of this subtitle. A copy of any administrative regulation promulgated
10 by the commissioner pursuant to this subsection shall be mailed to the principal
11 place of business of each licensee at least thirty (30) days before the date it takes
12 effect.

13 (2) To ensure compliance with this subtitle, the commissioner may:

14 (a) Examine the relevant business, books, and records of any licensee; and

15 (b) Examine or investigate licensees and any person reasonably suspected by
16 the commissioner of conducting business that is subject to the licensing
17 requirements of this subtitle.

18 (3) (a) The commissioner may charge a fee to any person examined or investigated
19 pursuant to this section. The fee shall be reasonable and related to the
20 actual expenses of the examination or investigation. The fee shall be
21 payable in addition to all other fees, taxes, and costs required by law.

22 (b) If a supervision fee is established pursuant to Section 5 of this Act, then
23 licensees who pay the supervision fee will no longer be required to pay
24 examination expenses pursuant to this subsection for examinations that
25 occur after payment of the supervision fee.

26 (4) Any person aggrieved by the conduct of a licensee in connection with the
27 activities regulated by this subtitle may file a written complaint with the

1 commissioner who may investigate the complaint.

2 (5) In the course of any examination or investigation authorized pursuant to this
 3 section, the commissioner may:

4 (a) Subpoena witnesses;

5 (b) Administer oaths;

6 (c) Examine any individual under oath or affirmation; and

7 (d) Compel the production of records, books, papers, contracts, or other
 8 documents relevant to the examination or investigation.

9 (6) If any person fails to comply with an action ordered by the commissioner
 10 pursuant to this section, the commissioner may:

11 (a) Petition any court of competent jurisdiction for enforcement of this section;
 12 and

13 (b) Suspend the license of any licensee pending compliance with this section.

14 (7) The commissioner shall have exclusive administrative power to investigate any
 15 and all complaints relating to the business of making credit access loans filed by
 16 any person that are not criminal in nature.

17 ➔SECTION 15. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 18 IS CREATED TO READ AS FOLLOWS:

19 (1) After notice and opportunity for a hearing, the commissioner may suspend or
 20 revoke any license if the commissioner finds that the licensee has knowingly or
 21 through lack of due care:

22 (a) Failed to pay any fees, expenses, or costs imposed by the commissioner
 23 pursuant to this subtitle;

24 (b) Committed any fraud, engaged in any dishonest activities, or made any
 25 misrepresentations;

26 (c) Violated any provision of this subtitle, any administrative regulation
 27 promulgated pursuant to this subtitle, or any other law in the course of the

- 1 licensee's dealings as a licensee;
 2 (d) Made a false statement in the application for the license or failed to give a
 3 truthful reply to a question in the application; or
 4 (e) Demonstrated incompetency or untrustworthiness to act as a licensee.
 5 (2) If the reason for revocation or suspension of a licensee's license at any one (1)
 6 location is of general application to all locations operated by a licensee, the
 7 commissioner may revoke or suspend all licenses issued to a licensee.
 8 (3) The hearing required by this section shall be held on written notice given at least
 9 twenty (20) days prior to the date of the hearing pursuant to KRS 13B.050 and
 10 shall be conducted in accordance with KRS 13B.080.

11 ➔SECTION 16. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 12 IS CREATED TO READ AS FOLLOWS:

13 After notice and opportunity for a hearing, if the commissioner finds that a person has
 14 violated this subtitle, or any administrative regulation or order promulgated or issued
 15 pursuant to this subtitle, the commissioner may:

- 16 (1) Order the person to cease and desist violating the subtitle or any administrative
 17 regulation or order promulgated or issued pursuant to this subtitle;
 18 (2) Require the refund of any amounts collected by the person in violation of this
 19 subtitle; and
 20 (3) Order the person to pay to the commissioner a civil penalty of not less than one
 21 thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) per
 22 violation for each day the violation is outstanding, plus the costs and expenses
 23 incurred by the commissioner for examination, investigation, and prosecution of
 24 the violation resulting in civil penalty, including reasonable attorney's fees and
 25 court costs.

26 ➔SECTION 17. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 27 IS CREATED TO READ AS FOLLOWS:

1 (1) After notice and opportunity for a hearing, the commissioner may censure,
 2 suspend for a period not to exceed twelve (12) months, or bar a person from any
 3 position of employment, management, or control of a licensee, if the
 4 commissioner finds that the:

5 (a) Censure, suspension, or bar is in the public interest and that the person has
 6 committed or caused a violation of this subtitle, any administrative
 7 regulation promulgated pursuant to this subtitle, or any order of the
 8 commissioner; or

9 (b) Person has been:

10 1. Convicted or pled guilty to, or pled nolo contendere to, any crime; or

11 2. Held liable in any:

12 a. Civil action by final judgment; or

13 b. Administrative action by final judgment by any public agency;

14 if the criminal, civil, or administrative judgment involved any offense
 15 reasonably related to the qualifications, functions, or duties of a licensee.

16 (2) Persons suspended or barred pursuant to this section are prohibited from
 17 participating in any business activity of a licensee and from engaging in any
 18 business activity on the premises where a licensee is conducting its business. This
 19 subsection shall not be construed to prohibit suspended or barred persons from
 20 having their personal transactions processed by a licensee.

21 ➔SECTION 18. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 22 IS CREATED TO READ AS FOLLOWS:

23 (1) The commissioner may enter into a consent order at any time with any person to
 24 resolve any matter arising under this subtitle. A consent order shall be signed by
 25 the person to whom it is issued, or a duly authorized representative, and shall
 26 indicate agreement to the terms contained in the order. A consent order need not
 27 constitute an admission by any person that any provision of this subtitle or any

1 administrative regulation or order promulgated or issued pursuant to this subtitle
2 has been violated, nor need it constitute a finding by the commissioner that the
3 person has violated this subtitle or any administrative regulation or order
4 promulgated or issued pursuant to this subtitle.

5 (2) Notwithstanding the issuance of a consent order, the commissioner may seek civil
6 penalties and make referrals to criminal law enforcement authorities concerning
7 matters encompassed by the consent order.

8 (3) In cases involving extraordinary circumstances requiring immediate action, the
9 commissioner may take any enforcement action authorized by this subtitle
10 without providing the opportunity for a prior hearing, but shall promptly afford a
11 hearing upon an application to rescind the action taken that is filed with the
12 commissioner within twenty (20) days after receipt of the notice of the
13 commissioner's emergency action.

14 ➔SECTION 19. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
15 IS CREATED TO READ AS FOLLOWS:

16 Within fifteen (15) days of the occurrence of any one (1) of the following events, a
17 licensee shall file a written report with the commissioner describing the event and its
18 expected impact on the activities of the licensee in this state:

19 (1) The filing for bankruptcy or reorganization by the licensee;

20 (2) The institution of revocation or suspension proceedings against the licensee by
21 any state or governmental authority;

22 (3) The denial of the opportunity to engage in the business of making loans by any
23 state or governmental authority;

24 (4) Any felony indictment of the licensee or any of its directors, officers, or
25 controlling persons;

26 (5) Any felony conviction of the licensee or any of its directors, officers, or
27 controlling persons; and

1 (6) Other events that the commissioner may determine and identify by administrative
2 regulation.

3 ➔SECTION 20. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
4 IS CREATED TO READ AS FOLLOWS:

5 (1) Each licensee shall file an annual report with the commissioner on the date the
6 licensee files the renewal application required by Section 8 of this Act containing
7 the following information:

8 (a) The names and addresses of controlling persons;

9 (b) The location of all places of business operated by the licensee and the
10 nature of the business conducted at each location;

11 (c) The names and addresses of all affiliated entities regulated under this
12 chapter doing business in this state;

13 (d) 1. A financial statement that includes a balance sheet, statement of
14 income or loss, and statement of changes in financial position for the
15 immediately preceding fiscal year end prepared in accordance with
16 generally accepted accounting principles by a certified public
17 accountant or public accounting firm.

18 2. If the licensee does not have a financial statement meeting the
19 requirements of subparagraph 1. of this paragraph, it may submit a
20 financial statement of its parent if the financial statement is audited in
21 accordance with generally accepted accounting principles by a
22 certified public accountant or public accounting firm.

23 3. For a newly created entity, the commissioner may accept a balance
24 sheet prepared by a certified public accountant or public accounting
25 firm, accompanied by a projected income statement demonstrating
26 that the licensee will have adequate capital after payment of start-up
27 costs; and

1 licensed through a multistate automated licensing system. Pursuant to this
2 authority, the commissioner may:

3 (a) Promulgate administrative regulations that are reasonably necessary for
4 participation in, transition to, or operation of a multistate automated
5 licensing system;

6 (b) Establish relationships or enter into agreements that are reasonably
7 necessary for participation in, transition to, or operation of a multistate
8 automated licensing system. The agreements may include but are not
9 limited to operating agreements, information sharing agreements, interstate
10 cooperative agreements, and technology licensing agreements;

11 (c) Require that applications for licensing under this subtitle and renewals of
12 licenses be filed with a multistate automated licensing system;

13 (d) Require that any fees required to be paid pursuant to this subtitle be paid
14 through a multistate automated licensing system;

15 (e) Establish deadlines for transitioning licensees to a multistate automated
16 licensing system;

17 (f) Deny any applications or renewal applications not filed with a multistate
18 automated licensing system after the deadlines established pursuant to
19 paragraph (e) of this subsection have passed, notwithstanding any dates
20 established elsewhere in this subtitle, but only if the commissioner has
21 provided reasonable notice of any transition deadlines to licensees; and

22 (g) Take any further actions as are reasonably necessary to give effect to this
23 section.

24 (2) Nothing in this section shall authorize the commissioner to require a person who
25 is not subject to this subtitle to submit information to, or to participate in, a
26 multistate automated licensing system that is operated, or participated in,
27 pursuant to this subtitle.

1 (3) Notwithstanding this section, the commissioner retains full authority and
2 discretion to license persons under this subtitle and to enforce this subtitle to its
3 fullest extent. Nothing in this section shall be deemed to be a reduction or
4 derogation of that authority and discretion.

5 (4) Applicants for and holders of licenses issued pursuant to this subtitle shall pay all
6 costs associated with submitting an application to or transitioning a license to a
7 multistate automated licensing system, as well as all costs required by a multistate
8 automated licensing system for maintaining and renewing any license issued by
9 the commissioner on a multistate automated licensing system.

10 (5) The commissioner is authorized to use a multistate automated licensing system as
11 an agent for channeling information, whether criminal or noncriminal in nature,
12 whether derived from or distributed to the United States Department of Justice or
13 any other state or federal governmental agency, or any other source, that the
14 commissioner is authorized to request from, or distribute to, pursuant to this
15 subtitle.

16 ➔SECTION 22. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
17 IS CREATED TO READ AS FOLLOWS:

18 (1) The requirements of any federal or state law regarding the privacy or
19 confidentiality of any information or material provided to a multistate automated
20 licensing system, and any privilege arising under federal or state law, including
21 the rules of any federal or state court with respect to such information or
22 material, shall continue to apply to the information or material after the
23 information or material has been disclosed to a multistate automated licensing
24 system. The information or material may be shared with all state and federal
25 regulatory officials with consumer credit oversight authority without the loss of
26 privilege or the loss of confidentiality protections provided by federal or state law,
27 including the protection available under the Kentucky Open Records Act, KRS

1 61.871 to 61.884.

2 (2) For purposes of subsection (1) of this section, the commissioner is authorized to
 3 enter into agreements or sharing agreements with other governmental agencies,
 4 the Conference of State Bank Supervisors, or other associations representing
 5 governmental agencies as established by administrative regulation or order of the
 6 commissioner.

7 (3) Information or material that is subject to a privilege or is confidential pursuant to
 8 subsection (1) of this section shall not be subject to:

9 (a) Disclosure under any federal or state law governing disclosure to the public
 10 of information held by an officer or any agency of the federal government
 11 or the respective state; or

12 (b) Subpoena, discovery, or admission into evidence in any private civil action
 13 or administrative process, unless the person to whom the information or
 14 material pertains waives the confidentiality or privilege.

15 (4) This section shall supersede any inconsistent provisions of the Kentucky Open
 16 Records Act, KRS 61.871 to 61.884, pertaining to records that are open to public
 17 inspection.

18 (5) This section shall not apply to information or material relating to publicly
 19 adjudicated disciplinary and enforcement actions against persons subject to this
 20 subtitle that is included in a multistate automated licensing system for access by
 21 the public.

22 ➔SECTION 23. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 23 IS CREATED TO READ AS FOLLOWS:

24 (1) The commissioner shall, on or before October 1, 2018, implement a common
 25 database with real-time access through an Internet connection for licensees as
 26 provided in this section unless implementing the database by that date would be
 27 financially impracticable for the commissioner to design and operate or because

1 the commissioner has not entered into a contract with a qualified third-party
2 provider.

3 (2) The database shall be accessible to the department and to licensees to verify
4 whether any credit access loan plans are outstanding for a particular person.

5 (3) A licensee shall accurately and promptly submit the following data before
6 entering into each credit access loan plan in a format that the commissioner may
7 require by administrative regulation or order:

8 (a) The customer's name;

9 (b) The customer's Social Security number or employment authorization alien
10 number;

11 (c) The customer's address;

12 (d) The customer's driver's license number;

13 (e) The amount of the credit access loan plan;

14 (f) The date of the credit access loan plan;

15 (g) The date that the completed credit access loan plan is closed; and

16 (h) Any additional information required by the commissioner.

17 (4) The commissioner may promulgate administrative regulations to ensure that the
18 database is used by licensees in accordance with this subtitle.

19 (5) The commissioner shall impose a fee of one dollar (\$1) per credit access loan
20 plan for data required to be submitted by a licensee, which fee may be charged to
21 the customer.

22 (6) The commissioner may operate the database described in subsection (1) of this
23 section or may select and contract with a third-party provider to operate the
24 database. If the commissioner contracts with a third-party provider for the
25 operation of the database, all of the following apply:

26 (a) The commissioner shall ensure that the third-party provider selected as the
27 database provider operates the database pursuant to the provisions of this

1 subtitle;

2 (b) The commissioner shall consider cost of service and ability to meet all the
3 requirements of this subtitle in selecting a third-party provider as the
4 database provider;

5 (c) In selecting a third-party provider to act as the database provider, the
6 commissioner shall give strong consideration to the third-party provider's
7 ability to prevent fraud, abuse, and other unlawful activities and to provide
8 additional tools for the administration and enforcement of this subtitle;

9 (d) The third-party provider shall use the data collected pursuant to this section
10 only as prescribed in this subtitle and in the contract with the department
11 and for no other purpose;

12 (e) If the third-party provider violates this subtitle, the commissioner may
13 terminate the contract and the third-party provider may be barred from
14 becoming a party to any other state contracts;

15 (f) A person injured by the third-party provider's violation of this subtitle may
16 maintain a civil cause of action against the third-party provider and may
17 recover actual damages plus reasonable attorney's fees and court costs; and

18 (g) The commissioner may require that the third-party provider collect the fee
19 assessed under subsection (5) of this section from the licensee. The third-
20 party provider shall remit the fee collected from the licensee to the
21 commissioner no later than the first day of each month. The third-party
22 provider shall deposit any fee collected in a separate escrow account in a
23 federally insured financial institution and shall hold the fee deposited in
24 trust for the Commonwealth of Kentucky.

25 (7) The database described in subsection (1) of this section shall allow a licensee
26 accessing the database to do all of the following:

27 (a) Verify whether a customer has any open credit access loan plans with any

1 licensee;

2 (b) Provide information necessary to ensure licensee compliance with any
3 requirements imposed by the United States Department of Treasury's Office
4 of Foreign Assets Control and Financial Crimes Enforcement Network;
5 and

6 (c) Track and monitor the number of customers who notify a licensee of
7 violations of this subtitle, the number of times a licensee agreed that a
8 violation occurred, the number of times that a licensee did not agree that a
9 violation occurred, the amount of restitution paid, and any other
10 information the commissioner may require by administrative regulation or
11 order.

12 (8) While operating the database, the database provider shall:

13 (a) Establish and maintain a process for responding to credit access loan plan
14 verification requests when technical difficulties occur with the database that
15 prevent the licensee from accessing the database through the Internet;

16 (b) Comply with any applicable federal and state laws to prevent identity theft;

17 (c) Provide accurate and secure receipt, transmission, and storage of customer
18 data; and

19 (d) Meet the requirements of this subtitle.

20 (9) When the database provider receives notification that a credit access loan plan
21 has been closed, the database provider shall designate the credit access loan plan
22 as closed in the database immediately, but in no event after 11:59 p.m. on the day
23 the database provider receives notification.

24 (10) (a) The database provider shall automatically designate a credit access loan
25 plan as closed in the database five (5) days after the credit access loan plan
26 maturity date unless a licensee reports to the database provider before that
27 time that the loan remains open because:

- 1 1. The customer failed to make payment;
- 2 2. The customer's check is in the process of clearing the banking system;
- 3 3. The credit access loan plan remains open because the customer's
4 check is being returned to the licensee for insufficient funds, a closed
5 account, or a stop payment order; or
- 6 4. Any other factors determined by the commissioner.

7 (b) If a licensee reports the status of a credit access loan plan as open in a
8 timely manner, the credit access loan plan remains open until it is closed
9 and the database provider is notified that the credit access loan plan is
10 closed.

11 (11) If a licensee stops making credit access loans:

12 (a) The database provider shall designate all open credit access loan plans with
13 that licensee as closed in the database sixty (60) days after the date the
14 licensee stops making credit access loans, unless the licensee reports to the
15 database provider before the expiration of the sixty (60) day period which of
16 its credit access loan plans remain open and the specific reason each credit
17 access loan plan remains open.

18 (b) The licensee shall provide to the commissioner a reasonably acceptable
19 proposal that outlines how the licensee will continue to update the database
20 after it stops making credit access loans. The commissioner shall promptly
21 approve or disapprove the proposal and immediately notify the licensee of
22 the commissioner's decision. If the proposal is disapproved, the licensee
23 may submit a new proposal or may submit a modified proposal for the
24 licensee to follow. If at any time the commissioner reasonably determines
25 that a licensee that has stopped offering credit access loans is not updating
26 the database in accordance with its approved proposal, the commissioner
27 shall immediately close or instruct the database provider to immediately

1 close all remaining open credit access loan plans of that licensee.

2 (12) (a) The response to an inquiry to the database provider by a licensee shall state
3 only that a person is eligible or ineligible for a new credit access loan plan
4 and describe the reason for that determination. Only the prospective
5 customer seeking the credit access loan plan may make a direct inquiry to
6 the database provider to request a more detailed explanation of a particular
7 credit access loan plan that was the basis for the ineligibility determination.

8 (b) Any information regarding any customer's credit access loan plan history:

9 1. Is confidential;

10 2. Is not subject to public inspection;

11 3. Is not a public record subject to the disclosure requirements of the
12 Kentucky Open Records Act, KRS 61.870 to 61.884;

13 4. Is not subject to discovery, subpoena, or other compulsory process,
14 except in an administrative or legal action arising under this subtitle;
15 and

16 5. Shall not be disclosed to any person other than the commissioner.

17 (13) The commissioner may access the database provided pursuant to subsection (1)
18 of this section only for purposes of an investigation or examination of, or
19 enforcement action concerning, a database provider, licensee, customer, or other
20 person.

21 (14) The commissioner shall not delegate his or her responsibilities to investigate
22 violations of and enforce this subtitle to any third-party provider.

23 (15) (a) The commissioner shall make a determination that the database is fully
24 operational and shall send written notification to each licensee:

25 1. That the database has been implemented; and

26 2. The exact date that the database shall be considered operational for
27 the data entry requirement established in paragraph (b) of this

1 subsection.

2 (b) A licensee shall promptly and accurately enter into the database all credit
3 access loan plans undertaken by the licensee upon receipt of the written
4 notification established in paragraph (a) of this subsection.

5 (16) The commissioner may by administrative regulation or order:

6 (a) Require that data be retained in the database only as required to ensure
7 licensee compliance with this subtitle;

8 (b) Require that customers' credit access loan plan data in the database are
9 archived within three hundred sixty-five (365) days after each customer's
10 credit access loan plan is closed unless needed for a pending enforcement
11 or legal action;

12 (c) Require that any identifying customer information is deleted from the
13 database when data is archived; and

14 (d) Require that data in the database concerning a customer's credit access
15 loan plan is deleted from the database three (3) years after the customer's
16 credit access loan plan is closed or, if any administrative, legal, or law
17 enforcement action is pending, three (3) years after the administrative,
18 legal, or law enforcement action is completed, whichever is later.

19 (17) The commissioner may maintain access to data archived under subsection (16) of
20 this section for examination, investigation, or legislative or policy review.

21 (18) A licensee may rely on the information contained in the database as accurate and
22 is not subject to any administrative penalty or civil liability as a result of relying
23 on inaccurate information contained in the database, but only if the licensee
24 accurately and promptly submits the data required pursuant to this section before
25 entering into a credit access loan plan with a customer.

26 (19) The commissioner may use the database to administer and enforce this subtitle.

27 (20) The commissioner may require the database provider to file a report by March 1

1 of each year containing the following information as of December 31 for the
 2 previous calendar year:

3 (a) The total number and dollar amount of credit access loan plans entered;

4 (b) The total number and dollar amount of credit access loan plans
 5 outstanding;

6 (c) The total dollar amount of fees collected for credit access loan plans;

7 (d) The minimum, maximum, and average dollar amount of credit access loan
 8 plans entered into, the total dollar amount of the net charge-offs and write-
 9 offs, and the net recoveries of licensees;

10 (e) The average credit access loan plan amount, the average number of credit
 11 access loan plans, and the average aggregate credit access loan plan
 12 amount entered into per customer;

13 (f) The average number of days a customer was engaged in a credit access loan
 14 plan; and

15 (g) An estimate of the average total fees paid per customer for credit access
 16 loan plans.

17 (21) Enforcement of this section shall be effective ninety (90) days after the database
 18 implementation date established by the commissioner as set forth in subsection
 19 (15) of this section.

20 ➔SECTION 24. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 21 IS CREATED TO READ AS FOLLOWS:

22 Local government units including but not limited to cities and counties shall have no
 23 authority to regulate the business of making credit access loans.

24 ➔SECTION 25. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 25 IS CREATED TO READ AS FOLLOWS:

26 A license issued pursuant to this subtitle shall be available to all persons who are
 27 chartered, organized, or licensed pursuant to any subtitle of KRS Chapter 286 as of

1 *January 1, 2018, and who submit an application meeting the requirements of this*
 2 *subtitle prior to September 30, 2019.*

3 ➔SECTION 26. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 4 IS CREATED TO READ AS FOLLOWS:

5 *This subtitle shall be known and may be cited as the "Kentucky Credit Access Act."*

6 ➔Section 27. KRS 286.1-011 is amended to read as follows:

7 (1) There is created within the Public Protection Cabinet a Department of Financial
 8 Institutions, which shall be headed by a commissioner of financial institutions, who
 9 shall be the executive head of the department and shall be charged with the
 10 administration of the department.

11 (2) The Department of Financial Institutions shall exercise all administrative functions
 12 of the state in relation to the regulation, supervision, chartering, and licensing of
 13 *persons regulated pursuant to this chapter and KRS Chapter 292*~~[banks, trust~~
 14 ~~companies, savings and loan associations, consumer loan companies, investment~~
 15 ~~and industrial loan companies, and credit unions, and in relation to the regulation of~~
 16 ~~securities].~~

17 (3) There are established within the Department of Financial Institutions the following
 18 divisions:

19 (a) The Division of Depository Institutions, which shall be headed by a director
 20 appointed by the secretary of the Public Protection Cabinet in accordance with
 21 KRS 12.050. The division shall consist of entities deemed appropriate by the
 22 director;

23 (b) The Division of Non-Depository Institutions, which shall be headed by a
 24 director appointed by the secretary of the Public Protection Cabinet in
 25 accordance with KRS 12.050. The division shall consist of entities deemed
 26 appropriate by the director; and

27 (c) The Division of Securities, which shall be headed by a director appointed by

1 the secretary of the Public Protection Cabinet in accordance with KRS 12.050.

2 The division shall consist of entities deemed appropriate by the director.

3 (4) The department may accept any application or other document required to be filed
4 with the department in electronic format or in any other technology acceptable to
5 the department.